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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,550	01/08/2002	Jan Trebesius	(H) 01ICP0235USP	4686
7590 M Robert Kestenbaum 11011 Bermuda Dunes NE Albuquerque, NM 87111			EXAMINER THEIN, MARIA TERESA T	
			ART UNIT 3627	PAPER NUMBER
			MAIL DATE 09/02/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/869,550

Applicant(s)

TREBESIOUS, JAN

Examiner

MARISSA THEIN

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-7, 10-13 and 15-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-7, 10-13 and 15-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Response to Amendment

Applicant's "Amendment" filed on April 23, 2009 has been considered.

Applicant response by virtue of amendment to claims 1, 3-7, 9-13, and 15-28 has overcome the Examiner's rejection under 35 USC §102, second paragraph.

Applicant response by virtue of amendment to claims 7, 9-13, 15, and 23-25 has overcome the Examiner's rejection under 35 USC §101, second paragraph.

Claims 1, 7, 11, and 15 are amended. Claims 2, 8-9, and 14 are cancelled.

Claims 1, 3-7, 10-13, and 15-28 remain pending in this application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-7, 10-13, and 15-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,991,739 to Cupps et al. in view of U.S. Patent No. 6,700,674 to Otsuka et al.

Regarding claim 1, 5, 7, 11, 15, 17-21, and 24-27, Cupps discloses an online ordering system, method for food outlets, comprising:

- at least a first computer system which is accessible via the Internet under at least one domain, in which data on food outlets are stored on which a program runs (col. 2, lines 39-50);

- in each case a communication connection which can be established at least temporarily between the computer system and at least a large number of all the food outlets covered (Figure 1; col. 3, lines 49-55);
- connects an output device and/or display device at the food outlets to the first computer system (Figure 1; col. 3, lines 49-55)
- wherein said system is adapted to display various categories of food, wherein said system is adapted to receive (Figures 9-11; col. 10, lines 7-16);
- a user input of a specific category of the categories of food displayed (Figures 9-11; col. 10, lines 7-16);
- wherein said system is adapted to respond to the user input on the basis of the stored data on the food outlets and to display the food outlets which offer the category of food selected (Figures 9-11; col. 10, lines 7-16);
- display of a start page (Figure 8);
- user input of a geographical specification into a device of said system (Figure 11; col. 6, lines 19-27);
- response of said system to the user input on the basis of data on food outlets being related to said system, which data being stored by said system, and display of the food outlets, preferably within the specified geographical area (Figure 11; col. 6, lines 19-27);
- user input into said device in such a way that one of the displayed food outlets is selected (Figures 9-11; col. 10, lines 7-16)

- response of said system to the user input on the basis of the stored data on the food outlets and display of the items of food offered by the food outlet selected (Figures 9-11);
- user input in such a way that one of the displayed items of food is selected or a table reservation is made (col. 5, lines 37-44; Figures 9-10); and
- display of price categories of the food outlet (col. 5, lines 45-47).

However, Cupps does not explicitly disclose generating an email whereby a fax is generated from said e-mail by said system or a connected system or a connected fax server; the fax machine; the transmission of said fax to said fax machine; the system sends a message to the food outlet with the suggestion to check the fax machine if there are problems in the transmission of the order to the food outlet; e-mail, fax message to another fax machine; and notified on an unsuccessful attempt to fax the order. Cupps discloses a system and method for providing an online offering machine that manages the distribution of home delivered products over a distributed computer system (abstract). Cupps discloses a distributed computer system includes a group of customers connected to client computers and at least one server computer system that executes the online ordering machine. The online ordering machine provides the customers with product information from various vendors whose delivery range is within the customer's location or with product information from vendors having take out service within a specified range from the customer's location. The online ordering machine accepts orders from the customer for a particular product from a selected vendor. The order is converted into voice instructions which are transmitted to the vendor through a

telephone call. Alternatively, the order can be transmitted via facsimile transmission with follow up voice instructions transmitted via a telephone call seeking a response. (Col. 2, lines 22-35)

Otsuka, on the other hand, teaches generating an email whereby a fax is generated from said e-mail by said system or a connected system or a connected fax server; the fax machine; the transmission of said fax to said fax machine; the system sends a message to the food outlet with the suggestion to check the fax machine if there are problems in the transmission of the order to the food outlet; e-mail, fax message to another fax machine; and notified on an unsuccessful attempt to fax the order (col. 1, lines 62-col. 2, line 12; col. 12, lines 22-39; Figure 1; col. 10, lines 16-17; Figures 9a-9b; col. 18, lines 4-33).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the system and method of Cupps, to generating an email whereby a fax is generated from said e-mail by said system or a connected system or a connected fax server; the fax machine; the transmission of said fax to said fax machine; the system sends a message to the food outlet with the suggestion to check the fax machine if there are problems in the transmission of the order to the food outlet; e-mail, fax message to another fax machine; and notified on an unsuccessful attempt to fax the order, as taught by Otsuka, in order to improve the rate of arrival of the information at the addressee (Otsuka, col. 4, lines 66-67).

Regarding claims 3-4, 6, 10, 12-13, 16, 22-23, and 28, Cupps discloses an interactive program runs on the first computer system; a second computer system,

which is connected to the Internet, can communicate with the first computer system; the program comprises at least one prompted user program and one unprompted user program; transmitting a message to the orderer on the success/failure of passing the order to the food outlet; user input delivery time and storage of the same by the system; user input of delivery address; and electronic voice phone message (col. 3, line 49-col. 4, line 12; col. 5, lines 9-13; col. 5, lines 18-20; col. 9, lines 53-62).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARISSA THEIN whose telephone number is (571)272-6764. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. T./
Examiner, Art Unit 3627
August 31, 2009

/F. Ryan Zeender/
Supervisory Patent Examiner, Art Unit 3627